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SERVICE DATE – LATE RELEASE OCTOBER 26, 2016

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE ON MOTION FOR
SANCTIONS AND ESTABLISHING DISCOVERY DEADLINES

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: October 24, 2016

On September 15, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City et al.) filed a Motion to Compel 212 Marin Boulevard, LLC, et al., (LLCs) to Answer Interrogatories, Make Admissions, and Provide Responsive Documents to Pending Document Requests (Motion to Compel) and a Motion for Sanctions Against James Riffin for Failure to Respond to Discovery Requests (Motion for Sanctions). The Motion to Compel requests an order directing the LLCs to respond fully and completely to certain document requests. The Motion for Sanctions requests discovery sanctions against Mr. Riffin pursuant to 49 C.F.R. 1114.31(b) (2016).

On September 23, 2016, Consolidated Rail Corporation (Conrail) filed a reply in partial support of City et al.'s Motion for Sanctions. On September 26, 2016, Mr. Riffin filed a reply in opposition to the Motion for Sanctions and a Motion to Strike Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions (Motion to Strike). On September 26, 2016, Conrail filed a reply in opposition to Mr. Riffin's Motion to Strike. On September 27, 2016, Mr. Riffin filed a clarification to his Motion to Strike.

On October 5, 2016, the LLCs filed replies in opposition to the Motion for Sanctions and the Motion to Compel filed by City et al. Additionally, the LLCs filed concurrently, in reply in opposition to the Motion to Compel, a Cross-Motion for Sanctions pursuant to 49 C.F.R. § 1114.21(c) (Cross-Motion for Sanctions).

On October 13, 2016, as corrected on October 14, 2016, the LLCs filed a reply to Mr. Riffin's Motion to Strike. On October 20, 2016, City et al. filed a reply to the LLC's Cross-Motion for Sanctions. On October 24, 2016, Mr. Riffin filed the arguments he stated he would say at the discovery hearing.

On October 24, 2016, oral arguments were held to address all of the motions and replies filed prior to October 24, 2016 that related to City et al.'s outstanding Motion to Compel, Motion for Sanctions, and related motions.

Based on the foregoing, I am adopting arguments contained in City et al.'s Motion for Sanctions, and City et al.'s October 24, 2016 oral arguments as the rationale for imposing sanctions on Mr. Riffin as ordered, below.

Moreover, based on my observations of Mr. Riffin at the October 24, 2016 oral arguments, I am making a demeanor credibility determination in which I find that Mr. Riffin is not a reliable witness as to the truth of the matter to which he asserts. His deportment suggests evasiveness, deliberate obtuseness, faulty memory, and mental reservation.¹ Mr. Riffin evaded direct questioning from me several times and contradicted himself on several occasions. He also alleged faulty memory as to the status of various emails and knowledge of certain parties.

It is ordered:

1. Mr. Riffin is prohibited from introducing anything further into evidence in the above-referenced dockets.
2. Mr. Riffin's pleadings are stricken from the proceedings in all three dockets.²
3. Mr. Riffin is dismissed from the proceedings in all three dockets, and prohibited from further participation in them.
4. Mr. Riffin is directed to pay City et al.'s counsel fees.³
5. The discovery proceedings in these three dockets will terminate no later than December 30, 2016. Accordingly, all discovery requests must be submitted no later than December 15, 2016.

¹ See *Thomas v. Sullivan*, 801 F. Supp. 65, 71 (N.D. Ill. 1992) (Court stated that a reviewing court would not disturb a credibility determination in which an ALJ assigned no credibility to a witness whose behavior gave an impression of evasiveness, deliberate obtuseness, or faulty memory). See also *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985) (holding that "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said.").

² This includes Mr. Riffin's notice of intent to file an Offer of Financial Assistance.

³ City et al.'s counsel will supply an accounting of all costs incurred through the October 24, 2016 oral arguments, but the accounting will not contain costs associated with deposing the LLCs.

6. This decision is effective on the date of service.

By the Board, John P. Dring, Administrative Law Judge.